



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 28 2017

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

Rebecca J. Rentz, Esquire  
Senior Environmental Counsel  
Occidental Petroleum Corporation  
5 Greenway Plaza  
Suite 110  
Houston, TX 77046

Dear Ms. Rentz:

This is in response to your request for clarification whether EPA's Chemical Data Reporting (CDR) rule required Occidental Chemical Corporation ("Occidental") to report imports of asbestos that occurred during the reporting period for the 2016 CDR. For the reasons described below, based on the information available to EPA, EPA believes that these imports were not required to be reported under CDR.

Asbestos is a chemical substance that is the subject of a rule promulgated under TSCA section 6.<sup>1</sup> Section 6 regulatory status can affect, in some respects, how CDR requirements apply to a chemical substance. For example, the reporting threshold for a section 6-regulated chemical substance is 2,500 lbs. rather than 25,000 lbs.<sup>2</sup> The pertinent question here, however, is whether the naturally occurring chemical substance (NOCS) exemption applied to the asbestos that Occidental imported. If the NOCS exemption applies, then the reporting threshold is irrelevant. This is reflected in the *2016 Instructions for TSCA Chemical Data Reporting* ("2016 Instructions"), page 2-2.<sup>3</sup>

The availability of the NOCS exemption is not affected by asbestos' regulatory status. This is clear from 40 CFR 711.6, which lists the types of CDR reporting exemptions that *are* eliminated once a chemical becomes subject to regulation under TSCA section 6. The NOCS exemption is omitted from that list. This is also reflected in the *2016 Instructions* (affirmatively noting, on page 2-12, that the NOCS exemption is not among the exemptions that are eliminated when a chemical substance has a special regulatory status).

The NOCS exemption is based on the definition of a "naturally occurring chemical substance" at 40 CFR 710.4(b). To qualify, a chemical substance must be unprocessed, processed only as described in 40 CFR 710.4(b)(1)(ii), or extracted from air. The CDR regulations make clear that these limitations are

---

<sup>1</sup> 40 CFR Part 763.

<sup>2</sup> 40 CFR 711.8(b).

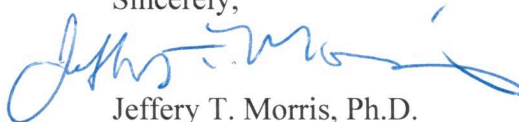
<sup>3</sup> The *2016 Instructions* are publicly available at [https://www.epa.gov/sites/production/files/2016-05/documents/instructions\\_for\\_reporting\\_2016\\_tsca\\_cdr\\_13may2016.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/instructions_for_reporting_2016_tsca_cdr_13may2016.pdf)

intended to distinguish between a chemical substance that was manufactured “as described in 40 CFR 710.4(b)” and a chemical substance that was manufactured by other means.<sup>4</sup>

The pertinent manufacturing here is the import of the asbestos (TSCA itself defines import as manufacturing).<sup>5</sup> Occidental has represented that, prior to the point of import, the asbestos had only been processed by mechanical and gravitational means, which are within the scope of 40 CFR 710.4(b)(1)(ii).<sup>6</sup> Assuming this is correct, the asbestos was manufactured as described in 40 CFR 710.4(b). Under these circumstances, the NOCS exemption applied and the import was exempt from CDR reporting. This would be a scenario as described in the *2016 Instructions* at 2-12 (“a naturally occurring chemical substance remains naturally occurring when it is imported”).

EPA understands that Occidental produced certain articles known as “asbestos diaphragms” using the imported asbestos. Post-import activities are irrelevant to whether the imports themselves were entitled to the NOCS exemption. The NOCS exemption for the imports is not contingent on Occidental thereafter limiting its processing of the imported chemicals to the activities described in 40 CFR 710.4(b). The CDR regulations make clear that the relevant issue for determining whether the asbestos import qualified for the exemption is whether the substance was within the scope of the NOCS exemption *when imported*.<sup>7</sup> Post-import activities associated with the imported asbestos would need to be separately evaluated for reportability under CDR.

Sincerely,



Jeffery T. Morris, Ph.D.

Director

Office of Pollution Prevention and Toxics

cc:

Lynn L. Bergeson, Bergeson & Campbell, P.C.

Kevin Mclean, USEPA OGC

Greg Sullivan, USEPA OECA

---

<sup>4</sup> 40 CFR 711.6.

<sup>5</sup> TSCA § 3(9)

<sup>6</sup> *Presentation to EPA: Naturally Occurring Chemical Substances Exemption CDR* at, July 11, 2017, p. 6.

<sup>7</sup> At 40 CFR 711.6, the CDR regulation draws a distinction based on how the chemical substance was manufactured (including imported): either “as described in 40 CFR 710.4(b)” or “by means other than those described in 40 CFR 710.4(b).” Similarly, the *2016 Instructions* clarify that the pertinent processing is that which describes “the means by which [minerals and certain agricultural products] are produced or isolated.” The asbestos at issue here was manufactured when it was imported. The means by which the asbestos was manufactured are described by the processing leading up to the point of import.